

Notice
of Rulemaking Hearing
Tennessee Ethics Commission
Chapter 0580-1-5
Rules Pertaining to Prohibited Activities

These rules are a new set that can be amended and expanded as the Commission develops new guidelines and advisory opinions relative to prohibited conduct, the gift ban, and exceptions thereto. For example, in the future the Commission may wish to place in rule an interpretation of the effect (if any) of the campaign contribution ban on PACs.

Currently, these rules incorporate the "Guidelines for Applying T.C.A. § 3-6-305(b)(3) Relative to Gifts Between Close Personal Friends" that was previously passed by the Commission. In addition, they incorporate the general conclusions reached by the Commission in Advisory Opinion 07-05 regarding the campaign contribution ban and different types of candidates.

The Tennessee Ethics Commission will hold a public hearing to receive comments concerning new rules, pursuant to T.C.A. § 3-6-107(1). This hearing will be conducted as prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-201 et seq., and will take place in the State Library and Archives Building, Capitol Blvd., Nashville, Tennessee, at ____ a.m. CDT on _____, 2007.

Written comments will be considered if received by close of business, _____, 2007, at the office of the Tennessee Ethics Commission, 201 4th Ave. N, Suite 1820, Nashville, TN 37248; 615-253-8634.

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Ethics Commission, 201 4th Ave. N, Suite 1820, Nashville, TN 37248, 615-253-8634, to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, by telephone, or other means, and should be made no less than ten (10) days prior to _____, 2007 or the date such party intends to review such filings, to allow time to provide such aid or service. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Complete copies of the text of the notice may be downloaded from the web at <http://state.tn.us/sos/tec/index.htm>, or may be obtained by contacting Anne F. Turner, Tennessee Ethics Commission, 615-253-2665, 201 4th Ave. N, Suite 1820, Nashville, TN 37248.

Substance of Proposed Rules
of
The Tennessee Ethics Commission

Chapter 0580-1-5
Rules Pertaining To Prohibited Activities

New Rules

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0580-1-5-.01 PURPOSE AND SCOPE.

These rules are promulgated for the purpose of prescribing prohibited conduct and exceptions to these prohibitions for lobbyists, employers of lobbyists, candidate and officials of the executive and legislative branches, and immediate family members of such candidates and officials, pursuant to T.C.A. §§ 3-6-304 through 3-6-305.

Authority: T.C.A. §§ 3-6-105 through 3-6-107, 3-6-304 through 305, 3-6-308.

0580-1-5-.02 DEFINITIONS.

- (1) Commission. The Tennessee Ethics Commission.

Authority: *T.C.A. § 3-6-107(1).*

0580-1-5-.03 PROHIBITED ACTIVITIES.

- (1) No lobbyist, employer of a lobbyist, official of the executive branch, official of the legislative branch, or such official's immediate family members, as those terms are defined by T.C.A. § 3-6-301, shall engage in any conduct which is prohibited by T.C.A. § 3-6-304.
- (2) No lobbyist or employer of a lobbyist shall provide, directly or indirectly, to a candidate for public office, an official in the executive or legislative branch, or the immediate family of such candidate or official, a gift as prohibited in T.C.A. § 3-6-305, nor shall the candidate, official, or immediate family thereof accept such gift, except as allowed by T.C.A. § 3-6-305 or these Rules.
- (3) The ban on campaign contributions contained in § 3-6-304(j) does not prohibit contributions by a lobbyist to an incumbent legislator or governor that are made in support of their election to a federal office.
- (4) Campaign contributions from a lobbyist to an incumbent legislator or governor who is running for a local public office are prohibited.

Authority: *T.C.A. §§ 3-6-304 through 3-6-305.*

0580-1-5-.04 EXCEPTIONS TO THE GIFT PROHIBITION.

- (1) Gifts Motivated by Close Personal Friendship. Gifts that are given for a non-business purpose and motivated by a close personal friendship are not subject to the gift ban pursuant to T.C.A. § 3-6-305(b)(3). In determining whether a gift is motivated by a close personal friendship the following factors will be considered:
 - (a) Whether the lobbyist or employer of a lobbyist is paying for or providing the gift out of his or her own personal funds, or whether the gift is instead being charged to the lobbying firm or to the employer of the lobbyist; whether the lobbyist is reimbursed by the lobbying firm or the employer of the lobbyist; or whether the cost of the gift is taken as a business deduction by the lobbyist, lobbying firm or employer. A gift that is expensed or the cost of which is reimbursed, or for which a business deduction is taken, will tend to indicate that the gift was provided for a business purpose.
 - (b) Whether there has been a history of gift giving between the lobbyist or the employer of a lobbyist, on the one hand, and the candidate, public official, or his or her immediate family, on the other hand; and the nature of the previous gift giving. The longer the practice, the more likely the gift giving is for a non-business purpose and a result of a close personal friendship. In addition, if the gift giving began prior to the candidate's or public official's attaining his or her status as such, and the pattern of gift giving remains consistent, then there is greater likelihood that the gift was a result of a close personal friendship rather than for a business purpose.
 - (c) Whether the candidate or public official, or immediate family member, has reciprocated with a gift to the lobbyist or the employer of the lobbyist in the past, and whether the gift has been of similar value. The presence of such a reciprocal gift will tend to indicate the existence of a non-business purpose and a close personal friendship.
 - (d) Whether the lobbyist or the employer of a lobbyist provides the same or similar items to other candidates, public officials, or the immediate families of such candidates or public officials at the same time, who are not also close personal friends. If similar gifts are provided to other candidates or public officials who are not close personal friends, it tends to negate the inference that the gift is provided based on a close personal friendship and supports the inference that it is for a business purpose.

- (e) Whether the timing and circumstances of the gift are appropriate. When a lobbyist or an employer of a lobbyist has a matter that is currently before or will shortly be before a public official, a gift to such official is more likely to be construed as being motivated by a business purpose unless there are countervailing reasons for the timing of the gift.
- (f) In the case of a gift given by an individual who works for an employer of a lobbyist, whether the individual is involved in lobbying activities on behalf of the employer of a lobbyist. If the giver is not involved in lobbying activities, the gift is more likely to be construed as being based on a close personal friendship rather than being for a business purpose.

Authority: T.C.A. § 3-6-305.

DRAFT

Legal contact and/or party who will approve final copy for publication:

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Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

Anne F. Turner, General Counsel

The roll-call vote by the Tennessee Ethics Commission on these rulemaking hearing rules was as follows:

	Aye	No	Absent
Thomas J. Garland (Chairman)	_____	_____	_____
R. Larry Brown	_____	_____	_____
Donald J. Hall	_____	_____	_____
Linda W. Knight	_____	_____	_____
Dianne Neal	_____	_____	_____
Benjamin S. Purser, Jr.	_____	_____	_____

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Ethics Commission on the ____ day of _____, 2007.

Further, I certify that the provisions of T.C.A. §4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing has been filed in the Department of State on the _____, 2007 and such notice of rulemaking hearing having been published in the _____, 2007_ issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the ____ day of _____, 2007.

Bruce A. Androphy, Executive Director

Subscribed and sworn to before me this the ____ day of _____ 2007.

Notary Public

My commission expires on the ____ day of _____, _____.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General & Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of state on the ____ day of _____, _____ and will become effective on the ____ day of _____, _____.

Riley C. Darnell
Secretary of State

By:_____